

NORTH HUNTINGDON TOWNSHIP

MM 97-182



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North Huntingdon Township · 11279 Center Highway · North Huntingdon, PA 15842
(412) 863-3806 · FAX (412) 863-9568

31 October 1997

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Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

IN RE: Township File No. NHT97-63
Comments

Dear Secretary:

Charlene Riggins
Township Manager
Township Secretary

Thomas P. Cole II
Solicitor

Donald M. Glenn
Engineer

Lucille A. Eresh
Treasurer

Enclosed please find an original and two (2) copies of an ex parte presentation, Comments, for placement in the public file or record. The enclosed Comments filed by the Township of North Huntingdon, a First Class Township in the County of Westmoreland, Commonwealth of Pennsylvania, are with regard to the Commission's Notice of Proposed Rule Making regarding the Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Transmission Facilities at FCC 97-296, 62 Fed. Reg. 46,241 (1997) (to be codified at 47 C.F.R.pt.1) (proposed Sept. 2, 1997).

Very truly yours,

Thomas P. Cole, II
Solicitor

TPC,II:bjh

Enclosures - as stated

cc: Charlene A. Riggins, Township Manager/Secretary - with enclosure

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**FEDERAL COMMUNICATIONS COMMISSION
EX-PARTE PRESENTATION**

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TOWNSHIP OF NORTH HUNTINGDON) DATE FILED: October 31, 1997
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) NUMBER:
) FCC 97-296
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) TYPE OF PLEADING:
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) COMMENTS
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) COUNSEL OF RECORD FOR
) THIS PARTY:
)
) Thomas P. Cole, II
) Solicitor
)
) Pa. I.D.#05679
)
) ADDRESS:
)
) 15 East Otterman Street
) Greensburg, PA 15601
)
) PHONE NO.:
) (412) 836-4390

Two (2) copies of this pleading have been submitted to the
Office of the Secretary, Federal Communications Commission.

FEDERAL COMMUNICATIONS COMMISSION
EX-PARTE PRESENTATION

TOWNSHIP OF NORTH HUNTINGDON)
) NUMBER:
) FCC 97-296
)

The following Comments filed by the Township of North Huntingdon, a First Class Township in the County of Westmoreland, Commonwealth of Pennsylvania, are with regard to the Commission's Notice of Proposed Rule Making regarding the Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Transmission Facilities at FCC 97-296, 62 Fed. Reg. 46,241 (1997) (to be codified at 47 C.F.R. pt. 1) (proposed Sept. 2, 1997). Two (2) copies of this pleading have been submitted to the Office of the Secretary, Federal Communications Commission.

1 With regard to the nature and scope of broadcast tower siting issues, including delays, time constraints and other matters experienced by the Township of North Huntingdon ("the Township"), the Township has processed only two (2) siting requests for such towers since 1996. The processing of said siting requests required approximately four (4) months in order

to process both requests. As a result of said siting requests and said processing, both towers have been constructed. No delays were experienced by the Township. Further, no difficulties in processing said requests were experienced by the Township.

2. With regard to whether the Township's existing ordinances and procedures are likely to impede adherence to the Commission's accelerated DTV build-out schedule, the Township's ordinances and procedures currently in place and proposed to be in place would most likely not impede adherence to the Commission's accelerated digital television build-out schedule. Further, the Township believes that it would be able to take all action necessary within a period of ninety (90) days of any request.

3. With regard to the Township's current procedure in responding to zoning and other land use regulations regarding the siting, placement and construction of broadcast transmission facilities including digital television build-out, the Township's current procedure is the issuance of a land use permit in commercial and industrial districts. The Township currently utilizes its land use permit procedures with reference to siting

requests. The Township plans, however, to enact new legislation on or before January 3, 1998. There is every possibility of the Township utilizing an expedited procedural schedule which would require the Township to act within ninety (90) days of requests relating to these issues.

4. With regard to the procedural framework proposed by the Petitioners (the National Association of Broadcasters and the Association for Maximum Service Television), the Township takes exception to same. The Township objects to the Petitioners' proposal that the political subdivision's failure to act within Petitioners' brief time limits would cause the [Petitioners' or others'] request to be deemed granted. As stated above, the Township believes that it would be able to take all necessary action within a period of ninety (90) days of any request. The Township believes that this ninety (90) day schedule is an appropriate expedited procedural schedule which will not impede Petitioners' or others' adherence to the Commission's accelerated DTV build-out schedule. Instead of the Petitioners' proposed 21, 30, and 45-day schedule, the Township suggests a 30, 60, and 90-day schedule. The Township does not believe that same is

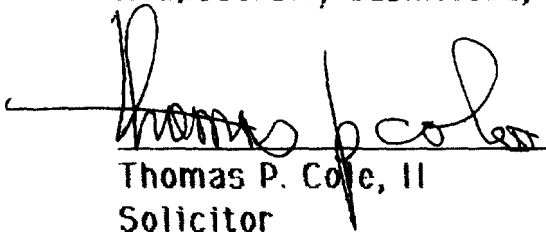
unreasonable. Further, the Township does not believe that same will unreasonably delay the DTV roll-out and other ongoing broadcast transmission facilities construction.

5 With regard to the Commission's question "[i]s there an appropriate role for the Commission in resolving disputes between localities and licensees with respect to tower siting issues?", the Township respectfully answers "no". The Township asserts that the appropriate method by which to resolve such disputes is for the parties to bring their claim(s), request(s) or cause(s) of action before the appropriate municipal fora and Commonwealth or State fora. For example, with regard to the Township and any disputes it may be involved in with licensees, the appropriate fora would be the Township's Zoning Hearing Board and the Board of Commissioners. Should appeal be necessary from these fora, then the appropriate fora would be the Commonwealth's Courts of Common Pleas and the Commonwealth's Appellate Courts. The Township respectfully asserts that the Commonwealth's Courts are sufficiently prepared and equipped to fairly and impartially resolve any disputes between localities and licensees with respect to tower siting issues and related issues by using existing common and statutory zoning, municipal and real

property law.

6. With regard to whether the Commission should preempt state and local restrictions regarding RF emissions from broadcast transmission facilities or local regulation intended for aesthetic purposes, the Township asserts that the Commission should not preempt state and local restrictions or regulations related to these matters. Further, the Township asserts that regulation of these matters is and should be strictly of state and local concern, not of federal concern.

Respectfully submitted,



Thomas P. Cole, II
Solicitor